

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No: 08-CR-20241-2

MARY MITCHELL,

Defendant.

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**ORDER DENYING WITHOUT PREJUDICE  
MOTION FOR NOTICE REGARDING 404(b) EVIDENCE**

Defendant Mary Mitchell has filed the above-captioned motion but has failed to indicate whether or not the contemplated relief would be agreed to by the Government.

Eastern District of Michigan Local Rule 7.1(a) states as follows:

(1) The movant must ascertain whether the contemplated motion will be opposed. If the movant obtains concurrence, the parties may make the subject matter of the contemplated motion a matter of record by stipulated order.

(2) If concurrence is not obtained, the motion must state:

(A) there was a conference between the attorneys or unrepresented parties in which the movant explained the nature of the motion and its legal basis and requested but did not obtain concurrence in the relief sought; or

(B) despite reasonable efforts specified in the motion, the movant was unable to conduct a conference.

(3) The court may tax costs for unreasonable withholding of consent.

The Rule plainly requires that the movant make clear that it has conducted the required pre-filing conference in which the nature of the contemplated motion was explained or, in the alternative, what unsuccessful efforts were made to engage in such a conference.

No exception is made for criminal cases. If the Government were to agree, the motion would be mooted. The court discourages motion practice that may be unnecessary and wasteful of court and attorney time. Accordingly,

IT IS ORDERED that the Defendant's Motion for Disclosure of Brady Materials [Dkt. # 38] is DENIED WITHOUT PREJUDICE.<sup>1</sup>

s/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: August 6, 2008

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, August 6, 2008, by electronic and/or ordinary mail.

s/Lisa G. Wagner  
Case Manager and Deputy Clerk  
(313) 234-5522

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<sup>1</sup>Defendant correctly recites Rule 404(b) as stating that “. . . *upon request* by the accused, the prosecution . . . shall provide reasonable notice in advance of trial . . . of the general nature of any such evidence it intends to introduce at trial” (emphasis added). Because there is no indication that Defendant has made any such request to the Government, a motion such as the one at hand is unnecessary and premature.